THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.22551 OF 2007

Between:

M/s.Durga Nagulamma Wines, Kannala,rep. By its Licencee V.Raju

…Petitioner

Vs.

Government of Andhra Pradesh, rep. By Prohibition and Excise Superintendent, Godavarikhani and others.

…Respondents.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.22551 OF 2007

ORAL ORDER

The learned counsel for the petitioner Sri T.Amarnath Goud undertakes to amend the cause title to impled the State of Andhra Pradesh represented by the Prohibition and Excise Superintendent, Godavarikhani, Karimnagar District and similarly the respondent Nos.2 and 3 and the State of Bank of Hyderabad represented by the Branch Manager- 4th respondent instead of as arrayed at present. He is so permitted.

The petitioner was issued a A-4 retail liquor vending licence for the period 01-07-2006 to 30-06-2008 under the provisions of the A.P. Excise Act,1968 and A.P. Excise(Lease of Right of Selling by shop and conditions of licence) Rules,2005. On an allegation that the petitioner vended the whisky diluted with water, a show-cause notice was issued and a licence cancelled by the proceedings of the 1st respondent dated.23-06-2007 pursuant to the show cause notice dated.09-06-2007. As against the order of cancellation the petitioner has preferred an appeal on 17-10-2007 before the 3rd respondent along with an application for grant of stay. It is the petitioner's grievance that the 3rd respondent has neither disposed of the appeal or even the application for interim relief. While so, the 1st respondent invoked a bank guarantee No.03/2006-07 for Rs.2,60,000/- furnished by the petitioner. It is the petitioner's further grievance that the 1st respondent is proceeding to invoke the other bank guarantee No.04/2006-07 also for Rs.2,60,000/-

which is valid up to April-2008 and for this purpose, he is in the process of addressing the 4th respondent-Bank. Herein the petitioner seeks invalidation of the order of the cancellation by the 1st respondent dated.27-06-2007 and direction to the 1st respondent not to invoke the bank guarantee by addressing the 4th respondent.

As the petitioner has already availed the appellate remedy before the 3rd respondent against the order of the 1st respondent dated.27-06-2007 (cancelling his excise licence), the validity of the order of cancellation cannot be adjudicated in this Court as it would be a case of parallel remedies pursued by the petitioner. Insofar as the invocation of bank guarantee is concerned, it is seen from the copy of the bank guarantee annexed to this writ petition that the bank guarantee is an irrevocable and unconditional bank guarantee. The relevant clause regarding such irrevocability and unconditionality is spelt out in clause.1 of the Bank guarantee, which reads as under:

> " We State Bank of Hyderabad do hereby undertake to (indicate the name of the Bank) pay amounts due and payable under this guarantee without any demur, merely on a demand from the Government. Any such demand made on the bank shall be conclusive both as regards breach of the terms and conditions and the amount due under the rules and the contract. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.2,60,000/- in words (Rs.two lacs sixty thousand only)."

Clauses 3 and 4 of the Bank guarantee also verify and reiterate the unconditinality of the bank guarantee. The petitioner has neither pleaded nor established any fraud, which vitiates the furnishing of the bank guarantee nor

its invocation by the respondents. Therefore and in terms of the decision in **U.P. Cooperative Federation Limited Vs. Singh Consultants & Engineers Private Limited([1])** and **R.D.Harbottle (Mercantile) Ltd., Vs. National Westminister Bank Limited ([2])** there can be no order issued interdicting the invocation of bank guarantee by the 1st respondent. This contention therefore fails.

Since the appeal preferred by the petitioner dated.17-10-2007 before the 3rd respondent against the 1st respondent's order of cancellation dated 27-06-2007 along with an application therein filed for interim relief is said to be pending before the 3rd respondent, the 3rd respondent is directed to expeditiously consider and dispose of the appeal or at least the application for interim relief, preferably within a period of four(4) weeks from the date of receipt of a copy of this Order.

Subject to the above the writ petition is dismissed. No order as to costs.

_____

GODA RAGHURAM,J

25TH OCTOBER,2007
*TSNR/PVSN

---

[1] (1988) 1 SCC 174
[2] (1977) 2 ALL E R 862